



MUCKLESHOOT INDIAN TRIBE

Fisheries Division

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May 25, 2010

Kelly Susewind, P.E., P.G.
Department of Ecology
Water Quality Program Manager
PO Box 47600
Olympia, WA. 98504-7600

RE: Pre-Draft Reclaimed Water Rule WAC 173-219

Dear Mr. Susewind,

Thank you for your May 12th letter inviting us to meet with Ecology on the draft Reclaimed Water Rule. We would like to accept the Department's invitation to meet to discuss our concerns with the draft rule in more detail. We have reviewed the pre-draft rule language and have the following initial comments.

Section 173-219-090

As expressed earlier in our November 13, 2009 letter, we continue to have reservations on defining water rights impairment in statute or in rule.

Section 173-219-105 (b) (i)

Subsection (i) specifies that Ecology would notify affected tribes within 15 working days when in receipt of an impairment evaluation request. However, no time frame is given for tribal notification when the applicant conducts the evaluation.

Section 173-219-110

We are generally opposed to the use of reclaimed water as mitigation for a new appropriation or changes to existing water rights. Use of reclaimed water to augment streamflows or recharge aquifers may have significant adverse environmental impacts on fishery and water resources that have not been properly evaluated. While there may be limited circumstances in which reclaimed water might provide appropriate mitigation, we do not believe that it is generally appropriate. Consequently, we object to promulgation of a rule that appears to validate use of reclaimed water as a generally applicable technique for mitigation of the impacts of new appropriations and water right changes.

Moreover, Section 173-219-110 was not discussed by the working group and goes beyond the scope of the rule which is intended to address permitting of a reclaimed water project, rather than appropriate mitigation techniques for new appropriations or change applications, or the standards for use of reclaimed water to mitigate new or changed water rights. We therefore request that it be deleted from the draft rule.

Section 173-219-660

Adequate protections for water quality impacts on fish are lacking, especially in the context of the use of reclaimed water as mitigation for new or changed water rights. At a minimum, biologic criteria are needed for both direct streamflow augmentation and indirect augmentation via groundwater recharge to ensure water quality concerns such as temperature, emerging contaminants and other constituents are addressed.

Finally, the rule should make clear that compliance with the rule and issuance of a permit allowing production of reclaimed water does not constitute a determination that its use for streamflow augmentation or groundwater recharge provides mitigation for any proposed water right or change application. Therefore the rule should expressly provide that determinations regarding the adequacy of mitigation proposals are subject to determination and further conditioning in connection with review of the associated water right or change application for which reclaimed water mitigation is proposed.

Thank you for the opportunity to comment on the pre-draft Reclaimed Water Rule and we look forward to meet with Ecology representatives to further discuss these concerns. Please ask Mr. Gaffney to contact me at 253-876-3127 or at carla.carlson@muckleshoot.nsn.us to discuss possible meeting dates.

Sincerely,



Carla Carlson
Water Resources Analyst

cc: Tim Gaffney, Department of Ecology
Lynn Coleman, Department of Ecology
Ken Slattery, Water Resources Program Manager
Don Davidson, Department of Ecology